

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

MENTAL HYGIENE LEGAL SERVICE,

Plaintiff,

- against -

ELIOT SPITZER, in his official capacity as Governor of the State of New York, ANDREW CUOMO, in his official capacity as Attorney General of the State of New York, MICHAEL HOGAN, in his official capacity as Commissioner of the New York State Office of Mental Health, DIANA JONES RITTER, in her official capacity as Commissioner of the New York State Office of Mental Retardation and Developmental Disabilities, and BRIAN FISCHER, in his official capacity as Commissioner of the New York State Department of Correctional Services,

Defendants.

Docket Number 07-CV-2935
(GEL) (THK)

NOTICE OF DEFENDANTS' MOTION TO
DISMISS COMPLAINT PURSUANT TO FRCP 12(b)(6)

TO:

MARVIN BERNSTEIN

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the First Judicial Department

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PLEASE TAKE NOTICE that defendants ELIOT SPITZER, Governor, ANDREW CUOMO, Attorney General, MICHAEL HOGAN, Commissioner of the Office of Mental Health, DIANA JONES RITTER, Commissioner of the Office of Mental Retardation and Developmental Disabilities, and BRIAN FISCHER, Commissioner of the Department of Correctional Services, will move this Court, before the Honorable Gerard E. Lynch, United

States District Judge, at the United States Courthouse, United States District Court for the Southern District of New York, located at 500 Pearl Street, New York, New York 10007, at a date and time to be determined by the Court, for an order pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure dismissing the Complaint against all defendants in its entirety, together with costs, disbursements, attorneys' fees, and such other and further relief as the Court may deem just and proper in the circumstances.

PLEASE TAKE FURTHER NOTICE that in support of its motion defendants shall rely upon the accompanying Defendants' Memorandum in Opposition to Motion for a Preliminary Injunction and in Support of Motion to Dismiss Complaint, dated May 16, 2007, the Complaint and all prior papers and proceedings herein.

PLEASE TAKE FURTHER NOTICE that pursuant to the Individual Practices of the Honorable Gerard E. Lynch, United States District Judge, (which require that two courtesy copies of all motion papers should be submitted to chambers at the time that reply papers, if any, are served), three copies of plaintiff's answering papers, if any, should be served upon the undersigned no later than June 6, 2007, and defendants' reply papers, if any, will be served on counsel for plaintiff no later than June 14, 2007.

Dated: New York, New York
May 16, 2007

ANDREW M. CUOMO
Attorney General of the State of New York
Attorney for Defendants
By:

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